

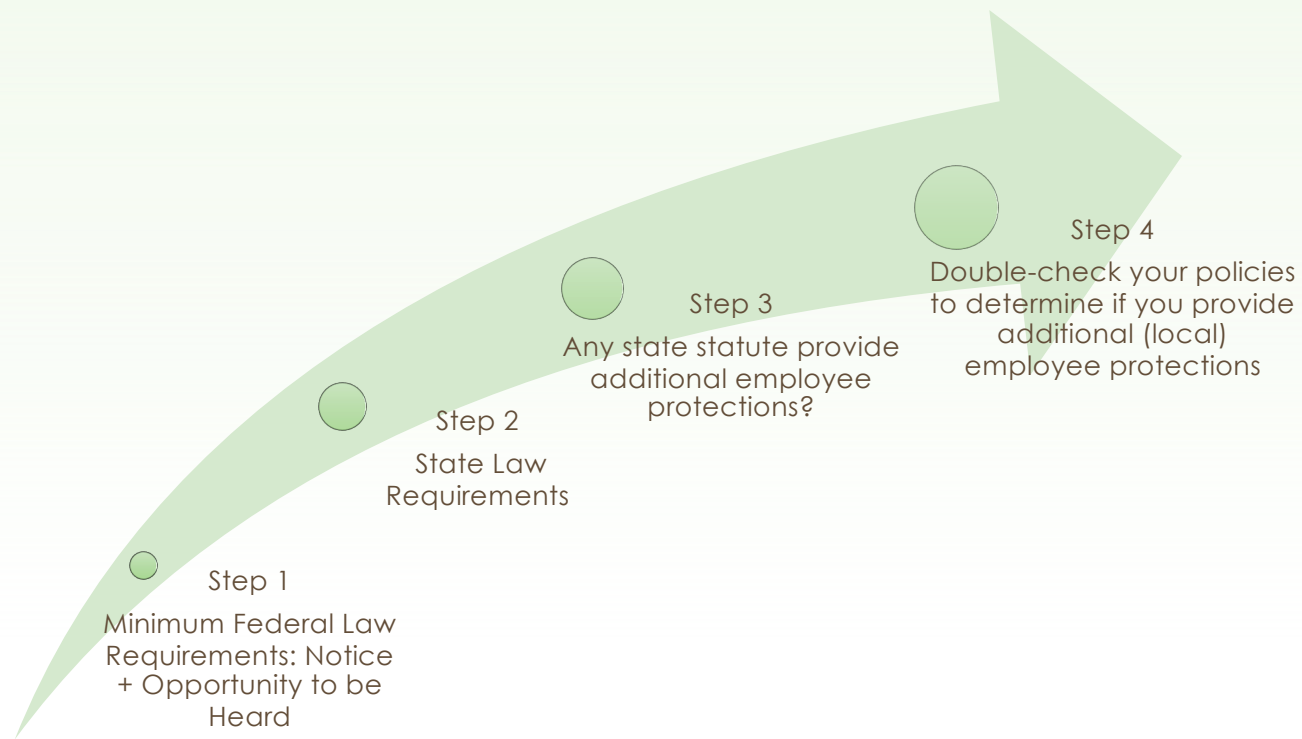
TERMINATIONS

HOW TO FIRE WITHOUT GETTING BURNED

AGENDA

- Due Process Considerations
- Policies & Procedures
- Tips for Terminations
- What Makes Plaintiffs' Lawyers Very Happy

Due Process Considerations



Notice to the Employee – How Much is Enough?

- Purpose: protect employees not from the deprivation, but the mistaken deprivation of life, liberty, or property
- Must be sufficient so the employee can determine what level of discipline is being proposed and what s/he must do to prevent the deprivation of his interest (i.e. written appeal or request for a hearing/meeting)
- Must explain the decision to terminate. CAREFUL!
 - Include all reasons for termination – if you leave one out, you may not be able to use later
 - BUT, being over-inclusive may open you up to a later claim that the termination was wrongful because of ... you fill in the blank.

Pre-termination v. Post-termination Hearings

- Some form of hearing is required before an individual is finally deprived of his/her interest.
- Purpose: follow a fair process of decision-making
- Generally used when the employer honestly, but mistakenly forgets to do a pre-termination hearing
- Generally will include the opportunity to confront and cross-examine due to the important questions at issue and that the right has already been taken away

State Law Considerations

- State statutes, like the Utah Personnel Management Act, may provide additional protections to employees pre-termination.
- Your local policies and procedures may provide even further protections to employees.

Policies & Procedures

When Policies Conflict

- County policies
 - Sheriff's policies
 - Standard operating procedures (Jail, ambulance service, etc.)
 - Lexipol policies
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- Which policies are first priority? Second? Third? Fourth?

Tips for Terminations

- Consult human resources and legal!
- Before giving notice of possible termination, make sure there is a documented trail of progressive discipline
- Record the pre-termination meeting
- Have a neutral witness present when giving notice of possible termination and during the pre-termination meeting

What Makes Plaintiffs'
Lawyers Very Happy

1. Documents Created After-the-Fact

- Document, document, document...
 - During the normal course of business.
 - Make sure any verbal warnings, written warnings, letters of reprimand, or any other discipline used in the progressive discipline process is forwarded to HR at the time the discipline occurs.

2. Not Following Policies

- As Sheriffs, you have multiple policies and procedures to follow, prior to a termination. Make sure your decisions are consistent with ALL policies.
 - County policies
 - Sheriff's policies
 - Standard operating procedures
 - Lexipol policies

3. Social Media

- Plaintiffs' lawyers have a great investigative tool by using social media.
- They can look at your Facebook page, if it's set to public, your Twitter posts, and your friends' and families' social media outlets, to discover incriminating information.
- Keep in mind that even a formal Sheriff's Office Facebook page can also be used against you. Make sure any statements made on an official, business-related social media outlet DISCLAIM the statements as official policy or practice.
- Plaintiffs' lawyers will always use the argument that "the buck stops with you" to keep you involved in a lawsuit.

LETS GO THROUGH AN EXAMPLE